

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Timothy McGuire and James Lee
Joseph Ryan,

Plaintiffs,

v.

Case No. 05-40185

Royal Oak Police Sgt. Douglas Warner,
et al.,

Honorable Sean F. Cox

Defendants.

ORDER
REQUIRING MOTIONS AND BRIEFS TO BE FILED
REGARDING EVIDENTIARY ISSUES

As explained below, on August 6, 2009, two evidentiary issues requiring briefing by the parties arose during trial in this matter.

Witness Timothy Renaud (“Renaud”) testified at trial in this matter and his testimony began on August 5, 2009. Plaintiffs’ Counsel David Robinson concluded his direct examination of Renaud on August 5, 2009. After Defense Counsel Joseph Seward concluded his cross-examination of Renaud on August 5, 2009, court was adjourned for the day.

On the morning of August 6, 2009, prior to Mr. Robinson’s re-direct examination of Renaud, Renaud had a conversation with Mr. Seward in the hallway outside the courtroom during which Renaud purportedly made a comment about Mr. Robinson having previously stated to him that Defendants are lying.

Mr. Robinson then conducted his re-direct examination of Renaud on August 6, 2009. During his re-cross examination of Renaud on August 6, 2009, Defense Counsel sought to

pursue a line of questioning to elicit testimony as to the comments that Renaud purportedly made to Mr. Seward on the morning of August 6, 2009 about Mr. Robinson having previously stated that Defendants were lying.

IT IS ORDERED that, no later than **2:00 p.m. on Friday, August 7, 2009**, Defense Counsel shall file a motion and brief of no more than five (5) pages addressing why Mr. Robinson's purported statement to Renaud, brought up in a conversation with Mr. Seward on the morning of August 6, 2009, is: 1) relevant; 2) not inadmissible hearsay; and 3) not beyond the scope of Mr. Robinson's re-direct examination of Renaud. Defense Counsel's brief should cite and attach all authority upon which it relies.

IT IS FURTHER ORDERED that Plaintiffs shall file their response, of no more than five (5) pages, no later than **4:00 p.m. on Friday, August 7, 2009**.

On August 6, 2009, Defense Counsel also sought to admit into evidence Defense proposed Exhibit No. 1, a narrative police report of Vincent Lichok. Plaintiffs objected to the admission of that exhibit. Defense Counsel contends that this exhibit qualifies as a business record under FED. R. EVID. 803. **IT IS ORDERED** that, no later than **2:00 p.m. on Friday, August 7, 2009**, Defense Counsel shall file a motion and brief of no more than five (5) pages as to why this Court should admit Defense Counsel's proposed Exhibit No. 1. Defense Counsel's brief should cite and attach all authority upon which it relies.

IT IS FURTHER ORDERED that Plaintiffs shall file their response, of no more than five (5) pages, no later than **4:00 p.m. on Friday, August 7, 2009**.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: August 6, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 6, 2009, by electronic and/or ordinary mail.

S/Jennifer Hernandez

Case Manager